

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

DIVISION OF SOLID WASTE MANAGEMENT

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STATE REMEDIATION PROGRAM

BROWNFIELD'S MANUAL

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BROWNFIELDS MANUAL

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STATE OF TENNESSEE BROWNFIELDS LAW

BACKGROUND INFORMATION

In July, 2001, The Tennessee General Assembly passed its first legislation which specifically targets "Brownfields Projects". The Brownfields Law was enacted as Chapter 449 of the Public Acts of 2001. (A copy of the Brownfields Law is attached.) The law was enacted to promote redevelopment, expansion or reuse of contaminated or potentially contaminated industrial and commercial facilities throughout the State. The redevelopment of these sites has become of major importance to Tennessee cities because it can help raise the property value and tax base of the brownfield sites and surrounding properties, which in turn, creates an incentive to invest in areas formerly avoided by developers.

Under the Law a brownfields Project is defined as:

.....the screening, investigation, monitoring, control, and/or remediation of any abandoned, idled, under-utilized, or other property whose re-use growth, enhancement or redevelopment is complicated by real or perceived adverse environmental conditions. Brownfield projects may address sites contaminated by hazardous substances, solid waste, or any other pollutant.

In the past, developers shied away from brownfields redevelopment because of complex liability issues that made it difficult to assign responsibility for contamination and determine who must pay for its clean up. The Tennessee Brownfields Law not only provides liability protection to potential purchasers of contaminated property, it also insures that the future use of the property will not pose a risk to the public.

Due to the enactment of the Brownfields Law, brownfield projects are becoming very desirable development opportunities for business and industry across the State. The ability to effectively use the mechanisms described in the Brownfields Law can provide the means to make projects move forward that previously were mired down in concerns over liability. Ultimately, brownfield redevelopment provides the opportunity for "smart growth" within the State, both economically and environmentally.

PROCEDURE FOR ENTERING INTO A BROWNFIELDS VOLUNTARY AGREEMENT

Eligibility

Section 3 (T.C.A. 68-212-224(a)) authorizes the Commissioner of the Tennessee Department of Environment and Conservation to enter into voluntary agreements or consent orders with buyers for investigation and/or remediation of brownfield projects. In order to qualify for the Brownfield Voluntary Agreement, the potential purchaser must be willing and able to carry out the terms of the Agreement, and cannot have generated, transported or released any of the contamination that is to be addressed at the site.

Process for Entering the Brownfield Program

1. In order to enter the Brownfields program, the person(s) entering it must submit a request to TDEC for admittance into the Brownfield Program along with a summary description of all known existing environmental investigations, studies, reports or documents concerning the site's environmental condition. The summary shall include the date, title and author of the material, the conclusions contained in the material, and recommended remedial actions.
2. Upon TDEC's review of the summary data, the purchaser and TDEC shall discuss whether or not additional investigation and/or remediation will be required at the site. Once the purchaser and TDEC have agreed upon additional actions to be taken at the site (if any), a draft Voluntary Agreement shall be submitted by the purchaser to TDEC for approval. (A model Voluntary Agreement is attached.) The Voluntary Agreement will outline the agreed upon investigation, remediation, monitoring and/or maintenance of the site, as well as any land use restrictions that will be required.
3. Additionally, a participation fee of three thousand dollars (\$3,000.00) shall be paid to TDEC thirty days prior to the effective date of the Agreement.
4. Upon completion of all terms and conditions of a voluntary agreement, the Department shall issue a letter to the participants stating that the obligations under the agreement have been completed, and if appropriate, that no further action is required.

Liability Protections Provided in the Voluntary Agreement

Once the Voluntary Agreement is signed, the purchaser will obtain the following protections:

Limited Liability

The liability protection to the participants will be limited to those obligations defined in the agreement, and exempt the participant's further liability under any statute administered by the Department for investigation, remediation, monitoring and/or maintenance of any contamination identified and addressed in the agreement.

Contribution protection

The participants will not be liable to third parties for contribution regarding matters addressed in the agreement, provided that the third party received actual or constructive notice and opportunity to comment upon the agreement. The notice may be accomplished in several ways, but must be given at least thirty (30) days prior to the effective date of the agreement. If the site is an inactive hazardous substance site, the voluntary agreement will constitute an approved administrative settlement under 42 U.S.C. 9613(f), which will provide contribution protection in federal contribution actions under CERCLA.

Continuity of Protection

The liability protections extend to successors in interest or in title, contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the voluntary agreement and compliance with any land use restrictions that may be required; provided that these persons held no liability prior the agreement.

Land Use Restrictions

Upon determination by the Department that land use restrictions are the appropriate remedial action at a site, the participants shall be required to file a Notice of Land Use Restrictions in the Register of deeds office in the appropriate county(s). (A model Notice of Land Use Restrictions is attached.) Additionally, the participants shall send a copy of the Notice of Land Use Restrictions by certified mail to all local governments having jurisdiction over any part of the subject property.

These restrictions may apply to activities on, over, or under the land, including use of property, groundwater, building, filling, grading, excavating, and mining. The restrictions can only be made less stringent through public notice and opportunity for public input, and can be enforced not only by the owner of the property, but by any unit of local government having jurisdiction of the property.

Requirements For Exiting the Brownfields Program

The participants shall submit to the Department a packet containing copies of the following documents:

1. A fully executed copy of the Brownfield Voluntary Agreement
2. A copy of the Notice of Land Use Restrictions, with the date of recording stamped on the document by the appropriate County's Register of Deeds.
3. A copy of the Public Notice (if required) as published in the appropriate newspaper, along with the Publisher's Affidavit of publication.
4. Copies of letters sent by Certified Mail to adjacent property owners.
5. Copies of letters sent by Certified Mail to local governments.

Upon receipt of the above, and completion of all terms and conditions of the Agreement, the Department shall issue a letter to the participants stating that the obligations under the Brownfield Voluntary Agreement have been completed, and, if appropriate, that no further action will be required of the participants.

TENNESSEE'S BROWNFIELDS LAW

T.C.A. 68-212-224(a)

68-212-224. Brownfield projects voluntary cleanup oversight and assistance program.

(a) (1) There is hereby established a voluntary cleanup oversight and assistance program for the voluntary cleanup of Brownfield projects. The commissioner may enter into voluntary agreements or consent orders for the investigation and/or remediation of such sites or projects with any willing and able person: provided, however, that a voluntary agreement may not be employed with a person who generated, transported or released contamination that is to be addressed at the site. A person entering into a voluntary agreement or consent order shall submit to the commissioner a summary description of all known existing environmental investigations, studies, reports or documents concerning the site's environmental condition. Such summary description shall include, but shall not be limited to: date of the material; title of the material; person or entity that produced the material; results or conclusions contained in the material; any remedial action recommended including any monitoring and/or maintenance; and, other information which could reasonably be construed to be material to the commissioner's decision to enter into a voluntary agreement or consent order. Such voluntary agreements or consent orders shall outline the agreed upon investigation, remediation, monitoring, and/or maintenance, and shall be consistent with § 68-212-201. Such voluntary agreements or consent orders shall address public notice and public input. All activities shall be subject to any otherwise applicable and appropriate zoning, land use regulations and cleanup standards, including without limitation all provisions regarding public notice and opportunity for public input. All such voluntary agreements or consent orders may provide for the reimbursement of the department's oversight costs. These agreements shall not limit liability for contamination of a site occurring after the date of the voluntary agreement or consent order or for contamination not identified and addressed in the voluntary agreement or consent order. No such voluntary agreement or consent order shall be entered into concerning a site listed on the federal National Priorities List, or after a site has been proposed for such listing, without the concurrence of the United States environmental protection agency (EPA). Sites that the EPA has identified and advised the

commissioner as eligible to be proposed for listing on the federal National Priorities List will be managed in a cooperative process with the EPA.

(2) For inactive hazardous substance sites, the commissioner has the discretion and is authorized to establish an apportionment of liability consistent with § 68-212-207(b) in a voluntary agreement or consent order. Further, the commissioner may limit the liability of the participant in any voluntary agreement or consent order entered into pursuant to this section. Such a voluntary agreement or consent order may limit the participant's liability to the obligations set forth therein and exempt the participant from any further liability under any statute administered by the department, for investigation, remediation, monitoring and/or maintenance of contamination identified and addressed in the voluntary agreement or consent order. The commissioner may extend this liability protection to successors in interest or in title to the participant, contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the voluntary agreement or consent order and compliance with any land use restrictions required thereby; provided, that such liability protection to other persons does not apply to liability that arose prior to the voluntary agreement or consent order. Nothing in this section shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by the voluntary agreements or consent orders.

(3) A person who enters into a voluntary agreement or consent order with the commissioner that contains an apportionment or limitation of liability, pursuant to this section, shall not be liable to third parties for contribution regarding matters addressed in the voluntary agreement or consent order; provided, that the third party was given actual or constructive notice of the voluntary agreement or consent order, and the third party had an actual or constructive opportunity to comment upon the voluntary agreement or consent order. Constructive notice may be accomplished by, among other means, publishing a summary of the voluntary agreement or consent order in a newspaper of general circulation within the geographical area of the site or project at least thirty (30) days prior to the effective date of the agreement or order. For inactive hazardous substance sites, such voluntary agreements or consent orders shall, to the extent provided therein, constitute an approved administrative settlement pursuant to 42 U.S.C. § 9613(f).

(4) Except in an action to enforce a voluntary agreement or consent order, such agreement or order shall not be admissible as evidence in any suit, hearing or other proceeding against a person who received liability protection pursuant to

this section. Voluntary agreements and consent orders are not admissible as evidence of comparative fault in any third party tort suit, hearing or other proceeding.

(b) There is levied a fee of five thousand dollars (\$5,000) for participation in this program. This fee shall be in addition to and not in lieu of any moneys expended from the remedial action fund and shall be in addition to any other fee assessed pursuant to this part. The commissioner may waive any part, or all, of this fee if the commissioner determines that such waiver serves the public welfare.

(c) (1) The participation fees shall be used to establish a voluntary cleanup oversight and assistance fund. The purpose of this fund is to pay for state oversight of any cleanup efforts.

(2) Any unencumbered funds and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with the provisions of this part.

(3) Interest accruing on investments and deposits of the voluntary cleanup oversight and assistance fund shall be returned to this fund and remain a part of this fund.

(d) (1) Moneys expended from the remedial action fund for investigation prior to a party's participation in this program shall be recovered and deposited to that fund.

(2) Once a consent order has been entered, the commissioner has the discretion and is authorized to expend moneys from the remedial action fund to pay that portion of the investigation, cleanup, monitoring, maintenance and oversight of an inactive hazardous substance site to the extent such expenditures are not allocated under the consent order to the potentially liable party conducting the investigation and cleanup of the inactive hazardous substance site pursuant to this program. The commissioner is authorized to seek recovery of such expenditures from the remedial action fund from other liable parties in the full amount of their respective allocated share of liability by any legal remedy through the exercise of the commissioner's powers and duties as established by this part; provided, that if the consent order establishes an allocation of liability for the potentially liable party participating in the voluntary program, the commissioner may not assess the participant for a share of liability greater than the allocation established in the consent order.

(e) The criteria for selecting containment and cleanup actions, including monitoring and maintenance options to be followed under the voluntary cleanup and oversight assistance program, shall be those specified in § 68-212-206(d).

(f) In the event a person does not fulfill all the requirements established in a voluntary agreement or consent order, the commissioner may seek to enforce the voluntary agreement or consent order through any legal remedy.

(g) Upon completion of all terms and conditions of a voluntary agreement or consent order under this program, the commissioner shall issue a letter to the participant stating that the obligations under the voluntary agreement or consent order have been completed and, if appropriate, that no further action will be required of the participant. Upon reasonable request of the participant, the commissioner shall issue from time to time interim letters stating what specific obligations remain to achieve completion.

(h) Any consent order, voluntary agreement, the creation or removal of deed restrictions, and any other final agency action is subject to review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. When public notice is required to be given pursuant to this section, at a minimum, notice shall be sent by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties.

[Acts 1994, ch. 890, § 12; 1995, ch. 394, §§ 1-4; 2001, ch. 449, §§ 3-7.]

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
STATE REMEDIATION PROGRAM
Division of Solid Waste Management
VOLUNTARY AGREEMENT

RE: [SITE NAME]

SITE NUMBER

INTRODUCTION

This Voluntary Agreement (hereinafter "AGREEMENT") is made and entered into by and between the Tennessee Department of Environment and Conservation (hereinafter "Department"), and _____, a _____ [e.g., organized under and existing pursuant to the laws of the State of Tennessee] (hereinafter "Voluntary Party") for the purpose of addressing [an approximately _____ acre portion of] the above-referenced site (hereinafter "Site"), which has the real or perceived threat of the presence on the Site of hazardous substances, solid waste, or any other pollutant. The effective date of this Agreement is the thirtieth (30th) day after the publication of the notice described in Section F of this Agreement.

Betsy Child is the duly appointed Commissioner of the Department. Mike Apple has been delegated the authority to enter into Voluntary Agreements.

Pursuant to Tennessee Code Annotated § 68-212-224, the Commissioner is authorized to enter into a Voluntary Agreement with a party who is willing and able to conduct an investigation and remediation of a hazardous substance site or Brownfields Project and who did not generate, transport or release the contamination that is to be addressed at the Site.

REQUIREMENTS

A.

SITE LOCATION

The Site located at:

[Street address or legal description- attach as exhibit]

B. **ELIGIBILITY**

As required by T.C.A. § 68-212-224, a summary description of all known existing environmental investigations, studies, reports or documents concerning the Site's environmental condition has been submitted to the Department by the Voluntary Party. On the date of entering into this AGREEMENT, the Department has determined that the Site is not listed or been proposed for listing on the federal National Priorities List by the United States Environmental Protection Agency (EPA). By entering into this AGREEMENT, the Voluntary Party certifies to the best of the Voluntary Party's knowledge that the Voluntary Party did not generate, transport or release contamination that is to be addressed at this site.

C. **FINANCIAL REQUIREMENTS**

The participation fee is hereby set at \$3,000.00. This fee shall be paid within thirty (30) days prior to the effective date of this Agreement.

D. **IDENTIFICATION AND DOCUMENTATION OF CLEANUP**

Based on the information submitted to the Department by or behalf of the Voluntary Party, and the Department's own review and investigation of the Site, the Parties hereto agree that the following environmental conditions are to be addressed under this Agreement.

E. **AGREED LIABILITY RELIEF**

Real or perceived hazardous substances, solid wastes or other pollutants are determined to be present on this site to an extent that may or may not have been fully characterized. As the current owner or operator, or upon becoming an owner or operator of the Site, the Voluntary Party may occupy the status of a "liable party" pursuant to the definition of that term contained in T.C.A. § 68-212-202(4). Liability may be apportioned pursuant to factors in T.C.A. § 68-212-207 as well as other equitable factors. The Commissioner is authorized to determine an apportionment of liability within this Agreement as authorized by T.C.A. § 68-212-224.

The Commissioner agrees that the Voluntary Party's implementation of the actions agreed upon in Section H(2) will constitute satisfaction of the apportioned liability of the Voluntary Party under all environmental statutes administered by the Department for the contamination identified and addressed in Section D of this AGREEMENT. The Voluntary Party, however, remains potentially responsible for any release of hazardous substances or other pollutants that occurs at the Site while it owns or operates the site.

Following the completion of activities required under this Agreement and contingent upon the continued adherence and enforcement of any land use restrictions imposed pursuant to or as a result of this AGREEMENT, the Voluntary Party shall bear no further liability under any statute administered by the Department, for investigation, remediation, monitoring and/or maintenance of contamination identified and addressed in this Agreement; provided, however, that nothing in this AGREEMENT shall limit the liability of the Voluntary Party for contamination occurring after the date of the AGREEMENT. This liability protection is extended to successors in interest or in title to, contractors conducting response actions at the Site, developer, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the obligations contained in this Agreement and compliance with any land use restrictions required thereby provided that such liability protection to other persons does not apply to liability to the extent that such liability that arose prior to this AGREEMENT.

F. THIRD PARTY LIABILITY RELIEF

The Voluntary Party shall not be liable to third parties for contribution regarding matters addressed in this AGREEMENT; provided that, the Voluntary Party gave the third party actual or constructive notice of this AGREEMENT, and the third party was given an actual or constructive opportunity to comment upon this AGREEMENT. The Voluntary Party has demonstrated to the Department that constructive notice was accomplished by publishing a summary of this AGREEMENT in the _____ **[newspaper of general circulation within the geographical area of the Site]** at least thirty (30) days prior to the effective date of this AGREEMENT. Nothing in this Agreement shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by the voluntary agreement.

G. LAND USE RESTRICTIONS

Upon acquiring the Site, the Voluntary Party agrees that said property will be restricted as follows:

(e.g.: for industrial use and services only)

The Voluntary Party agrees that it will file any land use restriction identified by the Department as necessary for the safe use of the property in accordance with T.C.A. 68-212-225.

H. AGREED ACTIONS TO BE TAKEN

1. The Voluntary Party agrees to send notification of this AGREEMENT by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. The Voluntary Party shall provide adequate documentation to demonstrate that public notice has been accomplished.
2. The Voluntary Party agrees to _____

Upon completion of the work, the Voluntary party agrees to submit "as built" drawings to the Department of the work subject to this AGREEMENT.

3. Upon completion of all tasks set forth in this AGREEMENT, the Department shall issue to the Voluntary Party a letter stating the requirements of this AGREEMENT have been fulfilled and no further action of the Voluntary Party for contamination identified and addressed in this AGREEMENT is required. Upon the request of the Voluntary Party from time to time, the Department shall issue an interim status letter identifying what specific obligations remain to achieve completion of the work under this AGREEMENT. Issuance of a no further action letter shall not relieve the Voluntary Party of any responsibilities for operation and maintenance activities or continued adherence to and enforcement of land use restriction, if any, pursuant to T.C.A. § 68-212-225. The Department reserves the right to require additional action for contamination caused by the Voluntary Party occurring after the date of this AGREEMENT or for contamination not identified and addressed under this AGREEMENT, if any.

I. ADDITIONAL REQUIREMENTS

1. The Voluntary Party may request a time extension for any deadline included in this AGREEMENT prior to the deadline. The time extension may be granted through mutual consent for good cause shown.
2. The Voluntary Party agrees not to disturb, move or remove any areas of hazardous substances, solid waste or other pollutant(s) that are subject to liability protection under this AGREEMENT without written approval by the Department unless that activities are being conducted under the terms and conditions of this AGREEMENT or necessitated by the normal day-to-day activities of any on-going business.

J. SITE ACCESS

During the effective period of this AGREEMENT, and until certification by the Department of completion of all activities under this AGREEMENT, the Department and its representatives or designees shall have access during normal business hours to the Site. Nothing herein shall limit or otherwise affect the Department's right of entry, pursuant to any applicable statute, regulation or permit. The Department and its representative shall comply with all reasonable health and safety plans published by the Voluntary Party or its contractor and used by Site personnel for the purpose of protecting life and property.

K. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

The Voluntary Party certifies under penalty of law, including but not limited penalties for perjury, that the information contained in all submissions is true, accurate and complete to the best of their knowledge, information and belief. The Voluntary Party is aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violation.

L. RESERVATION OF RIGHTS

1. This AGREEMENT shall not be construed as waiving any right or authority available to the Commissioner to assess responsible parties other than the Voluntary Party for liability for civil penalties or damage incurred by the State, including any natural resource damage claims which the Department or the State of Tennessee may have under Section 107 of CERCLA or any other statute, rule, regulation or common law.
2. Nothing in this AGREEMENT shall be interpreted as limiting the Voluntary Party's right to preserve the confidentiality of attorney work product or client-attorney communication. T.C.A. § 68-212-202 et seq. contains no provisions for confidentiality or proprietary information. Therefore, records, reports, test results, or other information submitted to the Department under this AGREEMENT shall be subject to public review. Any and all records, reports, test results or other information relating to a hazardous substance site or the possible hazardous substance at the Site submitted under this AGREEMENT may be used by the Department for all purposes set forth in T.C.A § 68-212-201 et seq.
3. Voluntary Party may terminate this AGREEMENT at any time upon written notice to the Department. Upon such termination, the Voluntary Party shall have no further obligations hereunder other than payment of oversight costs accrued to the date of notice of termination; provided, that both Parties shall

have and retain all authority, rights and defenses as if this AGREEMENT had never existed.

The individual signing below on behalf of the Voluntary Party represents that he is a duly authorized agent, capable of entering into a binding AGREEMENT on behalf of the Voluntary Party. By entering into this AGREEMENT, this individual certifies that the Voluntary Party did not or did not cause to generate, transport or release contamination that is to be addressed at this site.

AGREED to by the parties as of the effective date.

_____	_____	_____	_____
Date	Mike Apple	Date	Voluntary Party
	Director		By:_____
	Division of Solid Waste Management		
Tennessee Department of Environment and Conservation		Title:_____	

This instrument prepared by
The Tennessee Department
of Environment and Conservation
Office of General Counsel
20th Floor, LEC Tower
Nashville, Tennessee 37243-1548

NOTICE OF LAND USE RESTRICTIONS

Notice is hereby given that pursuant to T.C.A. Section 68-212-225 of the *Hazardous Waste Management Act of 1983*, the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC") has determined that land use restrictions are an appropriate remedial action at the below-described property. Pursuant to T.C.A. Section 68-212-225(d) the register of deeds shall record this Notice and index it in the grantor index under the names of the owners of the land.

Witnesseth:

WHEREAS, the Grantor is the owner of the real property described in a Deed of record with the _____ County Register of Deeds as Instrument No., _____ herein after referred to as the "Property," and,

WHEREAS, the Property has been remediated, to the extent practicable, consistent with the National Contingency Plan and to levels protective of human health and the environment in a commercial/industrial area; and,

WHEREAS, the Grantor has agreed to impose certain land use restrictions on the Property as set forth hereinafter and has agreed to preserve and maintain these restrictions.

NOW, THEREFORE, in consideration of the foregoing, the Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following land use restrictions. Said land use restrictions shall run with the land and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and to TDEC and the respective successors and assigns of such parties:

Location of Contamination

(Identify the location and dimensions of the areas of potential environmental concern with respect to surveyed, permanent benchmarks. Where a site encompasses more than one parcel or tract of land, a composite map or plat

showing all parcels or tracts may be recorded; In addition, identify generally the type, location, and quantity of regulated hazardous substances and regulated substances known to exist on the site)

Land Use Restrictions:

Prior to any part of the Property being used for a residence, domicile, daycare, school, or church with an outdoor playground, the Grantor, its successors, and/or assigns must notify TDEC and must demonstrate to the satisfaction of TDEC that any such proposed use listed above will not pose a danger to public health, safety, or the environment. Prior to the removal of soil underlying the buildings or the Property, the Grantor, its successors, and/or assigns must notify TDEC and must demonstrate to the satisfaction of TDEC that any such proposed soil removal will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC for the restricted uses shall be in writing, must contain a reference to this instrument, and shall be filed with the _____ County Register of Deeds.

The Grantor, its successors, and/or assigns must notify TDEC prior to any invasive activity which could generate fugitive dust, including soil borings or potable groundwater wells, on the Property. The Grantor, its successors, and/or assigns must demonstrate to the satisfaction of TDEC, through sampling and analysis approved by TDEC, that any invasive activity will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC for the restricted uses shall be in writing, must contain a reference to this instrument, and shall be filed with the _____ County Register of Deeds.

(Identify any additional specific restrictions on the current or future use of the site)

Enforcement

Any owner of the land or any unit of local government having jurisdiction over any part of the subject property, may enforce this Notice of Land Use Restrictions by means of a civil action. The Commissioner of TDEC may enforce this Notice of Land Use Restrictions through the issuance of an Administrative Order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the restriction. Pursuant to T.C.A. Section 68-212-213, any person who fails, neglects or refuses to comply with a land use restriction commits a Class B misdemeanor and is subject to the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day.

Term

This Notice of Land Use Restrictions shall run with and bind the Property unless/until this Declaration shall be made less stringent or canceled as set forth under the paragraph entitled "Amendment and Termination."

Amendment and Termination

This Notice of Land Use Restrictions may be made less stringent or canceled by the Commissioner of TDEC if the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment. . No amendment to or termination of this Notice of Land Use Restrictions shall be effective until such amendment or instrument terminating this Notice of Land Use Restrictions is recorded by the _____ County Register of Deeds.

Severability

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, **the undersigned has executed this instrument this** _____ **day of** _____ **2005.**

Grantor

Before me, the undersigned Notary Public in and for the State aforesaid, personally appeared _____ and by their signature executed the foregoing instrument for the purpose therein contained.

WITNESS, this _____ day of _____, 2005.

Notary

Public

Commission Expiration